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THE SOUTHDOWN INSTITUTE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

DAVID HUSTED, JR., an individual

Plaintiff,

vs.

ROMAN CATHOLIC CHURCH IN  
THE STATE OF HAWAII, A.K.A.  
THE ROMAN CATHOLIC DIOCESE  
OF HONOLULU; THE DIOCESE OF  
BUFFALO, N.Y.; SOUTHERN TIER  
CATHOLIC SCHOOL ARCHBISHOP  
WALSH ACADEMY; THE  
SOUTHDOWN INSTITUTE; JAMES  
A. SPIELMAN; and DOE  
DEFENDANTS 1-10,

Defendants.

CIVIL NO. CV14-00192 SOM/BMK

DEFENDANT THE SOUTHDOWN  
INSTITUTE'S **ANSWER** TO  
PLAINTIFF'S COMPLAINT FOR  
DAMAGES FILED APRIL 22, 2014  
[ECF Doc. No. 1]; CERTIFICATE OF  
SERVICE

**DEFENDANT THE SOUTHDOWN INSTITUTE'S ANSWER TO  
PLAINTIFF'S COMPLAINT FOR DAMAGES FILED APRIL 22, 2014**

COMES NOW Defendant THE SOUTHDOWN INSTITUTE

("Southdown"), by and through its attorneys, RUFO LAW GROUP, LLC, in answer to Plaintiff's Complaint For Damages Filed herein on April 22, 2014 ("Complaint"), states as follows:

**FIRST DEFENSE**

1. The Complaint does not state a claim upon which relief can be granted.

**SECOND DEFENSE**

2. The Court lacks subject matter jurisdiction over the claims in the Complaint.

**THIRD DEFENSE**

3. The Complaint should be dismissed for lack of personal jurisdiction.

**FOURTH DEFENSE**

4. In answer to paragraphs 1, 2, 2.1, 2.2, 2.5, 3, and 11 of the Complaint, Southdown neither admits nor denies the remaining allegations

contained therein, as it is without information sufficient to form a belief as to the truth thereof.

5. In answer to paragraphs 2.3 and 13.H of the Complaint, Southdown admits only that it treated Defendant Spielman in 1989, after the abuse alleged in the Complaint took place. Southdown neither admits nor denies the remaining allegations contained therein, as it is without information sufficient to form a belief as to the truth thereof.

6. In answer to paragraphs 2.4, 4, 5, 6, 7, 8, 9, 12, 13.A-G, 13.I-J, 14, 15, 16, and 17 of the Complaint, Southdown denies the allegations as they pertain to it. Southdown neither admits nor denies the remaining allegations contained therein, as it is without information sufficient to form a belief as to the truth thereof.

7. In answer to paragraph 10 of the Complaint, Southdown admits only that it is a corporation incorporated pursuant to the laws of Ontario, with its

principal place of business in Canada. Southdown neither admits nor denies the remaining allegations contained therein, as it is without information sufficient to form a belief as to the truth thereof.

#### FIRST CAUSE OF ACTION

8. In answer to paragraph 18 of the Complaint, Southdown repeats, realleges, and adopts its answers to the paragraphs referenced therein as if fully set forth herein.

9. In answer to paragraphs 19 and 20 of the Complaint, Southdown denies the allegations as they pertain to it. Southdown neither admits nor denies the remaining allegations contained therein, as it is without information sufficient to form a belief as to the truth thereof.

10. In answer to paragraph 21 of the Complaint, Southdown neither admits nor denies the remaining allegations contained therein, as it is without information sufficient to form a belief as to the truth thereof.

SECOND CAUSE OF ACTION

11. In answer to paragraph 22 of the Complaint, Southdown repeats, realleges, and adopts its answers to the paragraphs referenced therein as if fully set forth herein.

12. In answer to paragraphs 23 and 24 of the Complaint, Southdown denies the allegations as they pertain to it. Southdown neither admits nor denies the remaining allegations contained therein, as it is without information sufficient to form a belief as to the truth thereof.

13. In answer to paragraph 25 of the Complaint, Southdown neither admits nor denies the remaining allegations contained therein, as it is without information sufficient to form a belief as to the truth thereof.

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THIRD CAUSE OF ACTION

14. In answer to paragraph 26 of the Complaint, Southdown repeats, realleges, and adopts its answers to the paragraphs referenced therein as if fully set forth herein.

15. In answer to paragraphs 27, 28, 29, 30, 31, and 32 of the Complaint, Southdown denies the allegations as they pertain to it. Southdown neither admits nor denies the remaining allegations contained therein, as it is without information sufficient to form a belief as to the truth thereof.

16. In answer to paragraph 33 of the Complaint, Southdown neither admits nor denies the remaining allegations contained therein, as it is without information sufficient to form a belief as to the truth thereof.

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FOURTH CAUSE OF ACTION

17. In answer to paragraph 34 of the Complaint, Southdown repeats, realleges, and adopts its answers to the paragraphs referenced therein as if fully set forth herein.

18. In answer to paragraphs 35 and 36 of the Complaint, Southdown denies the allegations as they pertain to it. Southdown neither admits nor denies the remaining allegations contained therein, as it is without information sufficient to form a belief as to the truth thereof.

19. In answer to paragraph 37 of the Complaint, Southdown neither admits nor denies the remaining allegations contained therein, as it is without information sufficient to form a belief as to the truth thereof.

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FIFTH CAUSE OF ACTION

20. In answer to paragraph 38 of the Complaint, Southdown repeats, realleges, and adopts its answers to the paragraphs referenced therein as if fully set forth herein.

21. In answer to paragraphs 39 and 40 of the Complaint, Southdown denies the allegations as they pertain to it. Southdown neither admits nor denies the remaining allegations contained therein, as it is without information sufficient to form a belief as to the truth thereof.

22. In answer to paragraph 41 of the Complaint, Southdown neither admits nor denies the remaining allegations contained therein, as it is without information sufficient to form a belief as to the truth thereof.

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SIXTH CAUSE OF ACTION

23. In answer to paragraph 42 of the Complaint, Southdown repeats, realleges, and adopts its answers to the paragraphs referenced therein as if fully set forth herein.

24. In answer to paragraphs 43, 44, 45, 46, 47, 48, and 49 of the Complaint, Southdown denies the allegations as they pertain to it. Southdown neither admits nor denies the remaining allegations contained therein, as it is without information sufficient to form a belief as to the truth thereof.

25. In answer to paragraphs 50 and 51 of the Complaint, Southdown neither admits nor denies the remaining allegations contained therein, as it is without information sufficient to form a belief as to the truth thereof.

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SEVENTH CAUSE OF ACTION

26. In answer to paragraph 52 of the Complaint, Southdown repeats, realleges, and adopts its answers to the paragraphs referenced therein as if fully set forth herein.

27. In answer to paragraphs 53, 54, and 56 of the Complaint, Southdown denies the allegations as they pertain to it. Southdown neither admits nor denies the remaining allegations contained therein, as it is without information sufficient to form a belief as to the truth thereof.

28. In answer to paragraphs 55 and 57 of the Complaint, Southdown neither admits nor denies the remaining allegations contained therein, as it is without information sufficient to form a belief as to the truth thereof.

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EIGHTH CAUSE OF ACTION

29. In answer to paragraph 58 of the Complaint, Southdown repeats, realleges, and adopts its answers to the paragraphs referenced therein as if fully set forth herein.

30. In answer to paragraphs 59 and 60 of the Complaint, Southdown denies the allegations as they pertain to it. Southdown neither admits nor denies the remaining allegations contained therein, as it is without information sufficient to form a belief as to the truth thereof.

31. In answer to paragraphs 61 and 62 of the Complaint, Southdown neither admits nor denies the remaining allegations contained therein, as it is without information sufficient to form a belief as to the truth thereof.

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NINTH CAUSE OF ACTION

32. In answer to paragraph 63 of the Complaint, Southdown repeats, realleges, and adopts its answers to the paragraphs referenced therein as if fully set forth herein.

33. In answer to paragraphs 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, and 74 of the Complaint, Southdown denies the allegations as they pertain to it. Southdown neither admits nor denies the remaining allegations contained therein, as it is without information sufficient to form a belief as to the truth thereof.

34. In answer to paragraph 75 of the Complaint, Southdown neither admits nor denies the remaining allegations contained therein, as it is without information sufficient to form a belief as to the truth thereof.

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TENTH CAUSE OF ACTION

35. In answer to paragraph 76 of the Complaint, Southdown repeats, realleges, and adopts its answers to the paragraphs referenced therein as if fully set forth herein.

36. In answer to paragraph 77 of the Complaint, Southdown denies the allegations as they pertain to it. Southdown neither admits nor denies the remaining allegations contained therein, as it is without information sufficient to form a belief as to the truth thereof.

ALL CAUSES OF ACTION

37. Any allegation in the Complaint not specifically admitted or addressed by Southdown is hereby denied.

**FIFTH DEFENSE**

38. Some or all of Plaintiff's claims are barred by the applicable Statute of Limitations.

### **SIXTH DEFENSE**

39. Some or all of Plaintiff's claims are barred by the lack of standing.

### **SEVENTH DEFENSE**

40. Some or all of Plaintiff's claims are barred because of Plaintiff's failure to join one or more indispensable parties.

### **EIGHTH DEFENSE**

41. Some or all of the allegations in the Complaint violate Rule 11 of the Federal Rules of Civil Procedure and/or the Hawai'i Rules of Professional Conduct.

### **NINTH DEFENSE**

42. Liability, if any, for the damages alleged in Plaintiff's Complaint rests with parties other than Southdown.

### **TENTH DEFENSE**

43. Some or all of Plaintiff's claims are barred or should be reduced by Plaintiff's comparative negligence.

### **ELEVENTH DEFENSE**

44. Southdown did not owe Plaintiff a duty of care, especially prior to 1989, after the acts alleged in the Complaint took place.

### **TWELFTH DEFENSE**

45. Southdown's acts and/or omissions were not the proximate cause of Plaintiff's damages.

### **THIRTEENTH DEFENSE**

46. Some or all of Plaintiff's claims are barred by equitable doctrines of laches, waiver, estoppel and/or unclean hands.

#### **FOURTEENTH DEFENSE**

47. Some or all of Plaintiff's claims are barred by the defense of lack of knowledge or notice.

#### **FIFTEENTH DEFENSE**

48. Some or all of Plaintiff's claims are barred for failure to exhaust administrative remedies.

#### **SIXTEENTH DEFENSE**

49. Some or all of Plaintiff's claims are barred by Plaintiff's failure to mitigate.

#### **SEVENTEENTH DEFENSE**

50. Plaintiff is barred from maintaining this action against Southdown by reason of his own acts, omissions, or other wrongful conduct, which was the legal cause of the damages alleged in the Complaint.



### **EIGHTEENTH DEFENSE**

51. Some or all of Plaintiff's claims are barred because Southdown acted within the standard of care.

### **NINETEENTH DEFENSE**

52. If Plaintiff sustained any of the injuries or damages alleged in the Complaint, those injuries or damages were caused by an independent intervening or supervening cause or by the negligence or other fault of a person or entity over whom or which Southdown exercised no control.

### **TWENTIETH DEFENSE**

53. Some or all of Plaintiff's claims are barred by unavoidable consequences and/or an Act of God.

### **TWENTY-FIRST DEFENSE**

54. Some or all of Plaintiff's claims are barred by the defense of assumption of risk.

**TWENTY- SECOND DEFENSE**

55. Some or all of Plaintiff's claims are barred by the defenses of consent and/or acquiescence.

**TWENTY- THIRD DEFENSE**

56. Plaintiff has failed to allege fraud with the required specificity as to Southdown.

**TWENTY- FOURTH DEFENSE**

57. Plaintiff has failed to properly allege the elements of gross negligence as to Southdown.

**TWENTY- FIFTH DEFENSE**

58. Some or all of Plaintiff's claims are barred because Southdown acted in good faith.

## **TWENTY- SIXTH DEFENSE**

59. Plaintiff is not entitled to recover the punitive damages demanded in the Complaint, as an award of punitive damages would violate Southdown's rights under the Constitution of the United States of America and under the Constitution of the State of Hawai'i, including Southdown's right to (1) procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of Hawai'i; (2) protection from "excessive fines" as provided in the Eighth Amendment of the United States Constitution and Article I, Section 12 of the Constitution of the State of Hawai'i; and, (3) substantive due process as provided in the Fifth and Fourteenth Amendments of the United States Constitution and Article I of the Constitution of the State of Hawai'i.

**TWENTY- SEVENTH DEFENSE**

60. Southdown hereby asserts any and all affirmative defenses provided under Rule 8(c) of the Federal Rules of Civil Procedure.

**TWENTY- EIGHTH DEFENSE**

61. Based on the allegations in the Complaint, Southdown cannot formulate all of its defenses at this time; however, it reserves the right to amend its Answer to include additional affirmative defenses if and when discovery or circumstances so justify.

**TWENTY- NINTH DEFENSE**

62. Plaintiff is not entitled to any damages under the Complaint, whether prayed for or not.

**WHEREFORE**, Southdown prays that:

A. All claims contained in the Complaint be dismissed, with prejudice;

- B. If liability is found with regard to Southdown, the relative degree of fault of each party be determined and that Southdown have apportionment and/or judgment over and against the other parties for any amount which it may pay in excess of its *pro rata* share;
- C. Southdown be awarded attorneys' fees and costs;
- D. Southdown have such other and further relief as this Court deems just and equitable.

DATED: Honolulu, Hawai'i, December 19, 2014.

/s/ Sergio Rufo  
SERGIO RUFO  
RUFO LAW GROUP, LLC

Attorneys for Defendant  
THE SOUTHDOWN INSTITUTE

Civil No. CV14-00192 SOM-BMK; Husted, Jr. vs. Roman Catholic Church in the State of Hawai'i, et al.; DEFENDANT THE SOUTHDOWN INSTITUTE'S ANSWER TO PLAINTIFF'S COMPLAINT FOR DAMAGES FILED 4/22/14